



(6560-50-P)

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 271

[EPA-R09-RCRA-2015-0822; FRL-9943-99-Region 9]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Nevada has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this direct final rule. In the "Proposed Rules" section of today's Federal Register, EPA is also publishing a separate document that serves as the proposal to authorize these changes. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Nevada's changes to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a document in the Federal Register withdrawing today's direct final rule before it takes effect, and the separate document in today's "Proposed Rules" section of this Federal Register will serve as the proposal to authorize the changes.

DATES: This final authorization will become effective on *[insert date 75 days after date of*

publication in the Federal Register] unless EPA receives adverse written comment by [*insert date 45 days after date of publication in the Federal Register*]. If EPA receives such comment, EPA will publish a timely withdrawal of this direct final rule in the Federal Register and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-RCRA-2015-0822 at www.regulations.gov or via email to Amaro.Laurie@epa.gov. For comments submitted at Regulations.gov, follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Instructions: EPA must receive your comments by [*insert date 45 days after date of publication in the Federal Register*]. Direct your comments to Docket ID Number EPA-R09-RCRA-2015-0822.

Docket: All documents in the docket are listed in the www.regulations.gov index.

Publicly available docket materials are available either electronically in www.regulations.gov, or in hard copy.

You can view and copy Nevada's application and associated publicly available materials at the EPA Region 9 Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415-947-4406, during business hours from 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. Monday through Thursday; or at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 901 So. Stewart Street, Ste. 4001, Carson City, NV 89701, Phone number: 775-687-4670, during business hours from 9 a.m. to 5 p.m. Monday through Friday. Interested persons wanting to examine these documents should make an appointment with the relevant office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, amaro.laurie@epa.gov, 415-972-3364, US EPA Region IX, 75 Hawthorne Street (LND-1-1), San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to

EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New federal requirements and prohibitions imposed by federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Nevada, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On November 25, 2015, and December 28, 2015, Nevada submitted final complete program revision applications seeking authorization of changes to its hazardous waste program that correspond to certain federal rules promulgated between July 1, 2005, and June 30, 2008, (also known as RCRA Clusters XVI through XVIII). EPA concludes that Nevada's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA grants Nevada final authorization to operate as part of its hazardous waste program the changes listed below in Section G of this document, as further described in the authorization application.

Nevada has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of today's authorization decision?

The effect of this decision is that the changes described in Nevada's authorization application will become part of the authorized state hazardous waste program, and therefore will be federally enforceable. Nevada will continue to have primary enforcement authority and responsibility for its state hazardous waste program. EPA retains its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including authorized state program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the state has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Nevada is being authorized by today's action are already effective, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

Along with this direct final rule, EPA is publishing a separate document in the "Proposed Rules" section of today's Federal Register that serves as the proposal to authorize these state program changes. EPA did not publish a proposal before today's rule because EPA views this as a routine program change and does not expect comments that oppose this approval. EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, EPA will withdraw today's direct final rule by publishing a document in the Federal Register before this rule becomes effective. EPA will base any further decision on the authorization of the state program changes

on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular change to the state hazardous waste program, EPA will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The Federal Register withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Nevada previously been authorized for?

Nevada initially received final authorization on August 19, 1985, effective November 1, 1985 (50 FR 42181) to implement the RCRA hazardous waste management program. Nevada has since received authorization for all revisions except for 40 CFR 260.22 and the final rule published on April 12, 1989 (61 FR 16289) addressing Imports and Exports of Hazardous Waste. EPA granted authorization for changes to Nevada's program on the following dates: April 29, 1992, effective June 29, 1992 (57 FR 18083); May 27, 1994 and June 23, 1994 (corrections), effective July 26, 1994 (59 FR 27472 and 59 FR 32489); April 11, 1995, effective June 12, 1995 (60 FR 18358); June 24, 1996, effective August 23, 1996 (61 FR 32345); January 29, 1999, effective March 30, 1999 (64 FR 4596), June 12, 2002, effective August 12, 2002 (67 FR 40229); and February 26, 2009, effective April 27, 2009 (74 FR 8757).

G. What changes is EPA authorizing with today's action?

On November 25 and December 28, 2015, Nevada submitted final complete program

revision applications, seeking authorization of those changes in accordance with 40 CFR 271.21. EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Nevada's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Accordingly, EPA grants Nevada final authorization for the following program changes:

1. Program Revision Changes for Federal Rules

Nevada adopts by reference the federal RCRA regulations in effect as of July 1, 2008, at Nevada Administrative Code (NAC) 444.8632, as modified by NAC 444.86325, 444.8633, and 444.8634, as adopted in LCB File R137-07, effective January 30, 2008, LCB File R015-08, effective April 17, 2008, and LCB File R153-08, effective April 23, 2009. The federal requirements for which the State is being authorized are as follows:

RCRA Cluster XVI (Federal Rules Published from July 1, 2005, to June 30, 2006)

Adopted by Nevada as indicated in LCB File R137-07, effective January 30, 2008

- Mercury Containing Equipment Final Rule (70 FR 45508, August 5, 2005) (Checklist 209)
- Standardized Permit Final Rule (70 FR 53420, September 8, 2005) (Checklist 210)
- Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (Headworks Exemption) Final Rule (70 FR 57769, October 4, 2005) (Checklist 211)
- National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Final Rule (70 FR 59402, October 12, 2005) (Checklist 212)

- Burden Reduction Initiative Final Rule (71 FR 16862, April 4, 2006) (Checklist 213)

RCRA Cluster XVII (Federal Rules Published from July 1, 2006, to June 30, 2007)

- Adopted by Nevada as indicated in LCB File R15-08, effective April 17, 2008
- Corrections to Errors in the CFR Final Rule (71 FR 40254, July 14, 2006) (Checklist 214)
- Cathode Ray Tubes Final Rule (71 FR 42928, July 28, 2006) (Checklist 215)

RCRA Cluster XVIII (Federal Rules Published from July 1, 2007, to June 30, 2008)

- Adopted by Nevada as indicated in LCB File R153-08, effective April 23, 2009
- National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors Amendments (73 FR 18970, April 8, 2008) (Checklist 217)
- Amendment to Hazardous Waste Code F019 Final Rule (73 FR 31756, June 4, 2008) (Checklist 218)

2. Miscellaneous Changes

During the review of Nevada's regulations, EPA identified several changes that Nevada had made to provisions EPA had previously authorized, as well as a number of state provisions that have never been authorized. In its program revision applications described in Section G., Nevada also addressed state-initiated changes. These miscellaneous changes, which are listed following this paragraph, generally (1) update the CFR reference dates to conform to the State's adoption of the federal regulations and (2) update addresses. EPA has evaluated the changes addressed in this section and has determined that the State's authorized hazardous waste program, as amended by these provisions, remains equivalent to, consistent with, and no less

stringent than the federal RCRA program for which the State is authorized.

NAC, as amended effective April 23, 2009, sections 444.8427, 444.84275, 444.850, 444.86325, 444.8633, 444.8688, 444.8741, and 444.980.

Additionally, EPA is authorizing Nevada Revised Statutes (NRS) 459.501 and NRS 459.502. While these statutes are not new, EPA had not previously approved these sections as part of the State's authorized program because the sections require soil and water sample analyses and hazardous waste characterizations to be performed by a certified laboratory, but previously there were no regulations governing certification of laboratories. Nevada submitted LCB File R061-04, effective October 7, 2004, in its final complete program application, in which Nevada adopted regulations at NAC 459.96902-.9699 governing certification of laboratories. Because these regulations are now in place, EPA is authorizing NRS 459.501 and NRS 459.502.

H. Where are the revised state rules different from the federal rules?

One of the changes made to federal rules was for 40 CFR 279.10(b)(2), made by the July 14, 2006, final rule for Corrections to Errors in the Code of Federal Regulations (71 FR 40254; Checklist 214). As specified in NAC 444.86325(1)(k), Nevada has not adopted or incorporated by reference the provisions in 40 CFR 279.10(b)(2), which specify the applicability of the 40 CFR part 279 used oil requirements to mixtures of used oil and characteristic hazardous waste, and therefore no changes needed to be made to Nevada's regulations to correct the errors in 40 CFR 279.10(b)(2). NAC 444.8681 codifies the Nevada regulations for mixing of used oil with hazardous waste or products, which are more stringent than those found in the federal regulations in 40 CFR 279.10(b).

As discussed in Section G.2. above, NAC 459.96902-.9699 are new regulations

governing certification of laboratories that analyze soil and water samples and characterize hazardous waste, adopted by LCB File R061-04, effective October 7, 2004. The regulations were promulgated pursuant to NRS 459.500, which is already a part of the State's authorized program. The regulations themselves are broader in scope than the federal RCRA program because the federal program does not regulate certification of laboratories, and therefore the regulations are not federally enforceable. However, because Nevada has now put these regulations in place, EPA is authorizing NRS 459.501 and NRS 459.502. These provisions require soil and water sample analyses and hazardous waste characterizations to be performed by a certified laboratory. Because the federal program does not address where to send samples for analysis, Nevada's provisions are more stringent than the federal RCRA program for which the State is authorized.

NAC 444.84555, which was previously identified as broader in scope and therefore not part of the authorized program, has been updated to reflect an address change. NAC 444.9452, which is part of the State's regulations governing facilities that manage waste containing polychlorinated biphenyls, a program previously identified as broader in scope due to the requirement to obtain a RCRA permit prior to the commencement of construction, has been updated to reflect a date change. These provisions continue to be broader in scope and EPA is not authorizing them in this revision package.

EPA cannot delegate the federal requirements in 40 CFR 261.39(a)(5) and 261.41 contained in the Cathode Ray Tubes Rule set forth in 71 FR 42928, July 28, 2006. While Nevada adopted these requirements by reference in NAC 444.8632, EPA will continue to implement these requirements.

There is an outstanding issue in the revised Nevada program that will not be authorized at

this time. Nevada's program revisions include bringing its spent antifreeze recycling program up to date. As discussed in greater detail in the February 26, 2009, Federal Register (74 FR 8759), EPA is not authorizing the spent antifreeze recycling program because it may be less stringent than the federal program.

After Nevada adopted the "Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas" Final Rule (73 FR 57, January 2, 2008) ("Gasification Rule") at NAC 444.8632, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") vacated the Gasification Rule in Sierra Club v. EPA, 755 F.3d 968 (D.C. Cir. 2014). EPA gave notice of the vacatur of the Gasification Rule at 80 FR 18777 (April 8, 2015) and explained that it amended 40 CFR 260.10 by removing the definition of "Gasification," and revised 40 CFR 261.4(a)(12)(i) by removing gasification from the list of specific petroleum refining processes into which oil-bearing hazardous secondary materials may be inserted. The vacatur of the Gasification Rule and amendment of the federal regulations make Nevada's program less stringent than the federal program, and therefore EPA is not authorizing Nevada's program with respect to the Gasification Rule (Checklist 216).

EPA also gave notice at 80 FR 18777 of the removal of the provisions at 40 CFR 261.4(a)(16) and 40 CFR 261.38 related to comparable fuels due to the D.C. Circuit's vacatur of the "Hazardous Waste Combustors Revised Standards" Final Rule (63 FR 33782, June 19, 1998) in Natural Res. Def. Council v. EPA, 755 F.3d 1010 (D.C. Cir. 2014). This rule was previously adopted and approved as part of Nevada's authorized program, but in light of the vacatur, EPA no longer considers these provisions to be part of Nevada's federally authorized program.

Other than the differences discussed above, Nevada incorporates by reference the remaining federal rules listed in Section G; therefore, there are no significant differences between the remaining federal rules and the revised state rules being authorized today.

I. Who handles permits after the authorization takes effect?

Nevada will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g)(1), gives EPA the authority to issue or deny permits or parts of permits for requirements for which the State is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Nevada for the new or revised HSWA standards until Nevada has received final authorization for such new or revised HSWA standards. EPA and Nevada have agreed to a joint permitting process for facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

J. How does today's action affect Indian country (18 U.S.C. 1151) in Nevada?

Nevada is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Confederated Tribes of the Goshute Reservation; Duckwater Shoshone Tribe; Ely Shoshone Tribe; Fort McDermitt Paiute and Shoshone Tribes; Fort Mohave Indian Tribe; Las Vegas Tribe of Paiute Indians; Lovelock Paiute Tribe; Moapa Band of Paiute Indians; Paiute-Shoshone Tribe of the Fallon Reservation and Colony; Pyramid Lake Paiute Tribe; Reno-Sparks Indian Colony; Shoshone-Paiute Tribes of Duck Valley Reservation; Summit Lake Paiute Tribe; Te-Moak Tribes of Western Shoshone Indians; Walker River Paiute

Tribe; Washoe Tribe; Winnemucca Indian Colony; Yerington Paiute Tribe; and the Yomba Shoshone Tribe. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

K. What is codification and is EPA codifying Nevada’s hazardous waste program as authorized in this rule?

Codification is the process of placing the state’s statutes and regulations that comprise the state’s authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized state rules in 40 CFR part 272. EPA is not codifying the authorization of Nevada’s changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart DD for this authorization of Nevada’s program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C.

1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with

Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[insert date 75 days after date of publication in the Federal Register]** because it is a direct final rule.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated:

March 9, 2016.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2016-06434 Filed: 3/22/2016 8:45 am; Publication Date: 3/23/2016]